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Supreme Court of the United States

OCTOBER TERM, 1961

No. 822

TRINIDAD CORPORATION,
Petitioner

versus

INDIAN TOWING COMPANY, INC.,
Respondent

BRIEF IN OPPOSITION TO CERTIORARI

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The petition for certiorari herein is based on the proposition, that the District Court and the Court of Appeals absolved respondent from liability for the subject collision, despite petitioner's assertion that (1) respondent's vessel did not display proper lights, and (2) respondent's vessel failed to sound proper whistle signals.

Petitioner contends that the questions presented by its petition for certiorari are questions of law, not of fact. But in its original brief in the Court of Appeals, petitioner assigned not a single error of law, while assigning fourteen errors of fact, stated to have been committed by the District Court.

Further, the basis on which respondent was absolved from liability despite the fact that certain of the lights on one of its vessels were not at the prescribed height, is that both the District Court (finding 5d, quoted at page 22 of the petition for certiorari) and the Court of Appeals (opinion, quoted at page 28 of the petition for certiorari) found as a fact that there was no causal connection between this "slight nonobservance of the rules" and the collision.*

Petitioner's primary argument as to whistle signals is based on the premise, thoroughly developed in its trial and appellate briefs, that passing signals were not exchanged (see the second paragraph under Point C on page 12 of the petition for certiorari).

In fact, passing signals were exchanged. R 28, 29.

Nor did any such condition cited by petitioner, as requiring respondent's vessel to sound a danger signal, actually exist: Respondent had no way of knowing that petitioner's vessel would not reduce speed as required, or would imperil respondent's vessels by failing to reduce speed, until respondent's vessels were caught in the swell, and it was then too late to give any signals at all.

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* While the red and green navigation lights on respondent's lead barge were only 3½ feet above the water (R 25), the amber light (R 122, 138-39) was 7 feet up (only one foot below the required height), and all of the lights on respondent's tug were concededly correctly displayed (R 26). So were all the lights on another tug and tow, just passing respondent's flotilla, which petitioner's vessel did not see either. Both Courts below found that neither the master, mate, pilot nor lookout of petitioner's vessel even "looked to starboard in the vicinity of where those flotillas were". Opinion of the Court of Appeals (petition for certiorari, p. 26) and of the District Court (*Id.*, p. 19).

It is for this reason that neither the District Court nor the Court of Appeals considered petitioner's "whistle arguments" of sufficient substance to warrant discussion.

In the final analysis, as stated by the Court of Appeals (opinion, quoted at page 27 of the petition for certiorari): "Basically, this case presents an attack by the appellant upon the findings of fact of the trial court . . . After a careful study of the voluminous record before us we are convinced that the showing made contains ample evidence of the character necessary to support and uphold these findings."

It is respectfully submitted that the petition for certiorari should be denied.

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April, 1962